

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Complaint of GameFly, Inc.

Docket No. C2009-1R

ORDER DENYING MOTION FOR EXTENSION OF TIME

(Issued July 23, 2013)

On July 19, 2013, the Postal Service filed a motion requesting that the Commission extend the schedule for compliance with Order No. 1763.¹ The Motion is denied.

The Postal Service requests that the Commission allow the Postal Service 30 days from the date of final resolution of an “expected future motion to clarify issues” to file a notice of rate adjustment equalizing rates for letter-shaped and flat-shaped DVD

¹ See United States Postal Service Motion for Extension of Time in which to Comply with Order No. 1763, July 19, 2013 (Motion). Order No. 1763 requires the Postal Service to “equalize the rates for letter- and flat-shaped DVD mail either by: (1) establishing new equalized rates for letter-shaped and flat-shaped DVD mail; or (2) reducing the price for a two-ounce First-Class flat-shaped round-trip DVD mailer to the price of a one-ounce First-Class letter-shaped round-trip DVD mailer.” Order on Remand, June 26, 2013, at 39, Ordering ¶ 1 (Order No. 1763). The Postal Service is required to notify the Commission of its chosen rate equalization option on or before July 26, 2013. *Id.* Ordering ¶¶ 1, 2.

mail. Motion at 3. GameFly, Inc. (GameFly) opposes the Motion, arguing that the Postal Service has “had ample time” to comply with Order No. 1763.²

The Postal Service asserts that it intends to “file a motion seeking clarification and possibly reconsideration [of Order No. 1763] very soon.” Motion at 2. It states that it requires clarification of (among other, unspecified, issues) the price cap implications of Order No. 1763 and issues relating to “potential rate discrimination and to whom the new rates will apply.” *Id.* at 1.

More than three weeks elapsed between the date Order No. 1763 was issued and the date the Postal Service first identified a need for clarification. The Postal Service fails to explain why that amount of time was necessary to allow it to identify the issues that require clarification and to seek such clarification. With respect to the calculation of the price cap, the Commission notes that 39 C.F.R. part 3010, subpart B, explains both the contents of a notice of rate adjustment and the method for calculating the price cap. As Order No. 1763 explains in detail, an equalized rate completely remedies the rate discrimination at issue in this docket. Order No. 1763 at 29-33. Finally, Order No. 1763 specifies that the equalized rates established by the Postal Service shall apply to “letter-shaped and flat-shaped DVD mail.” *Id.* at 39.

The Postal Service further asserts that it requires additional time to carry out the complex analysis necessary to comply with Order No. 1763, especially in light of its desire to “minimize the impact on the Postal Service’s financial condition.” Motion at 2. The Commission appreciates the Postal Service’s commitment to this goal, but the Postal Service has not explained why, given the prolonged history of this proceeding and the intense focus on the need for a remedy subsequent to the remand order, it cannot carry out the necessary analysis within 30 days.

The Postal Service’s request for additional time to conduct financial and operational analyses seems to suggest that the possibility that equalized rates might be prescribed for letter- and flat-shaped DVD mail was not identified until June 26, 2013,

² Reply of GameFly, Inc., in Opposition to July 19 USPS Motion to Stay, July 23, 2013, at 4.

the date Order No. 1763 was issued. On the contrary, GameFly expressly advocated the adoption of equalized rates in its March 7, 2013 motion to establish remand procedures.³ In its order directing a settlement conference, the Commission identified equalized rates as a remedy under consideration by the Commission following the Court's remand.⁴ These identifications of equalized rates as a potential remedy, together with the repeated arguments regarding equalized rates in subsequent pleadings (all of which were filed before the issuance of Order No. 1763) make clear that by the time Order No. 1763 was issued, the Postal Service was well aware that it might be ordered to implement an equalized rate remedy. During the 4-month period between March 7, 2013, and June 26, 2013, the Postal Service had ample opportunity to begin investigating the economic, financial, and operational conditions that it now claims must be analyzed. GameFly should not be penalized for the Postal Service's failure to undertake consideration of these issues earlier.

Finally, the Postal Service points to the absence of "important stakeholders" due to infrequent meetings and summer vacations as a factor preventing it from timely complying with Order No. 1763. Motion at 3. While these factors may present obstacles to discussions with stakeholders, the Postal Service has failed to demonstrate why such obstacles could not be overcome within 30 days. Once again, GameFly should not bear the burden of the Postal Service's failure to pursue these stakeholder discussions more diligently.

This case has been underway for more than 4 years and it is time for the Postal Service to remedy the discrimination as ordered by the Commission. The Postal Service is under a legal duty to comply with Order No. 1763 by the deadline of July 26, 2013.

³ Motion of GameFly, Inc., to Establish Standards and Procedures to Govern Proceedings on Remand, March 7, 2013, at 8-13.

⁴ Order No. 1700, Order Convening Settlement Conference, April 16, 2013, at 9.

It is ordered:

The Postal Service Motion for Extension of Time in which to Comply with Order No. 1763 is denied.

By the Commission.

Shoshana M. Grove
Secretary